A.F.R.

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.236 of 2002

PETITIONER: Gurumukh Singh Hora

- Versus -

RESPONDENTS: State of Chhattisgarh and three others

ORDER FOR CONSIDERATION

Sd/-
L.C.BHADOO
Judge

HON'BLE THE CHIEF JUSTICE

I agree.

Sd/-
Chief Justice

POST FOR ORDER ON *8TH MARCH, 2004*

Sd/-
L.C.BHADOO
Judge

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.236 of 2002

PETITIONER: Gurumukh Singh Hora,
S/o Late Shri Amrik Singh Hora,
Aged about 53 years,
Chairman, Chhattisgarh State Co-operative Marketing Federation Limited, R/o Kawardha,
District: Kawardha (C.G.)

- Versus -

RESPONDENTS:

1. State of Chhattisgarh, Through Secretary, Co-operative Department, Mantralaya, Raipur (C.G.).
2. Mr. B. K. S. Ray, Registrar, Co-operative Societies, Raipur (C.G.)
3. Chhattisgarh State Co-operative Marketing Federation Ltd., having its office at 880, Civil Lines, Raipur (C.G.)
4. Registrar, Co-operative Societies, Raipur (C.G.)

Present: -

Mr. Alok Aradhe, Advocate with Mr. P. Diwaker and Mr. Bhaskar Payashi, Advocates: For the petitioner

Dr. N.K. Shukla, Additional Advocate General: For the State/respondents

Mr. Prashant Mishra, Advocate: For the intervener

Division Bench: **Hon'ble Mr. K. H. N. Kuranga, C.J.**
and Hon'ble Mr. L.C. Bhadoo, J.

ORDER

(Passed on 31st March, 2004)

The following order of the Court was delivered by ***L.C. Bhadoo, J***: -

1. In this writ petition under Article 226/227 of the Constitution of India petitioner Gurumukh Singh Hora has challenged the legality and validity of the order dated 10th January, 2002, passed by respondent No.2, Registrar, Co-operative Societies, Raipur, whereby he has assumed the charge of the

Chhattisgarh State Co-operative Marketing Federation Limited (for short 'the Marketing Federation').

2. The petitioner's petition is that he was initially inducted as a member of Vikas Sabji Phal Phool Utpadak Avam Vipanan Sahkari Samiti Maryadit, Kawardha. The petitioner was elected as representative of the aforesaid Samiti and thereafter, he was elected as a delegate from Rajnandgaon District and he became the Chairman of the Madhya Pradesh Marketing Federation for a term of five years on 4.1.1997 i.e. up to 3.1.2002.

3. On 18.10.2000, an Ordinance namely Madhya Pradesh Sahkari Societies (Punargathan Aur Nirman) Adhyadesh, 2000, was promulgated with a view to reconstitute the existing State Co-operative Societies in the State of Madhya Pradesh by excluding their area of operation, the part of territory of the State, and to form a new body namely, Chhattisgarh State Co-operative Marketing Federation for the new State of Chhattisgarh which was to come into existence on 01.11.2000. In view of the promulgation of the aforesaid Ordinance, the new body came into existence on 30.10.2000. Annexure P-2 is a copy of certificate of registration. In view of Section 3(2) of the aforesaid Ordinance seven Directors of the Chhattisgarh area continued to remain as Directors. The petitioner assumed charge of the Office of Chairman on 30th October 2000. Sub-section (7-A) of Section 49 of the M.P. Co-operative Societies Act, 1960, (for short 'the Act') provides that term of the committee of a society shall be five years from the date on which the first meeting of the committee is held. Thus, in view of sub-section (7-A) of Section 49 of the Act, the term of the society and committee was scheduled to expire on 3.1.2002. Sub-section (7-AA) of Section 49 of the Act provides that the State Government may by notification for reasons to be stated therein, extend the term of committee of a society or class of societies from time to time for a total period not exceeding 12 months.

4. It has further been mentioned in the petition that in exercise of powers under sub-section (7-AA) of Section 49 of the Act, the State of Madhya Pradesh issued a notification dated 28th October, 2000, (Annexure P-3) extending the term of the committees of non-agricultural and non-credit apex societies for a period of 12 months from the date of term of the respective committees, in view of the enactment of M.P. Re-organization Act, 2000, and formation of the new State of Chhattisgarh in near future. Respondent No.3 is a non-credit apex and non-agricultural society and

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therefore, the office bearers of the society are entitled to continue up to 3.1.2003 as the term of the committee stood extended by 12 months.

5. On an erroneous interpretation of the provisions of sub-section (8) of Section 49 of the Act, the Registrar has passed the order dated 10.1.2002 by which he assumed the charge of respondent No.3 Society on the assumption that the Society has failed to hold elections as provided under sub-section 8 of Section 49 of the Act. It is submitted that sub-section 8 (ii) of Section 49 of the Act, provides that if the committee of the society fails to hold elections and does not handover the charge on expiry of the term under sub-section (7-A) or extended term under sub-section (7-AA) to the Registrar or any officer authorized by him on his behalf, all the members of the committee shall be deemed to have vacated their seats and Registrar will take the charge and hold the elections as early as possible. Sub-section 8 (i) of Section 49 of the Act provides that it shall be obligatory on the committee of the society to hold elections prior to expiration of the term, under sub-section (7-A) or extended term under sub-section (7-AA) and to apply to the Registrar for holding elections within a reasonable time which shall not be in any case 90 days before expiry of the term of the committee.

6. In view of the notification dated 28.10.2000, the petitioner as well as other members of the committee of the society are entitled to continue up to 03.01.2003, and therefore, the petitioner has prayed that a writ in the nature of certiorari be issued and quash the order dated 10.01.2002 passed by the Registrar and the Registrar may be directed to allow the committee of the society to continue in their respective offices till 03.01.2003.

7. Return has been filed on behalf of respondents 1 & 2, in which they have mentioned that the State of Madhya Pradesh has not been arrayed as party to the petition, therefore the petition is liable to be dismissed. The State of Madhya Pradesh is a necessary party. The order of respondent No.2 is strictly in accordance with the provisions of the Act. It is submitted that the order dated 28.10.2000 deals with the extension of the tenure of non-agricultural and non-credit Apex Societies. The nature and category of respondent No.3 is already adjudicated by the Madhya Pradesh State Co-operative Tribunal, Bhopal, in Revision No.18/2002. The petitioner's wife namely, Smt. Ranjit Kaur, has already moved the State Co-operative Tribunal, Bhopal, copy of which is filed as Annexure R-3, for the same relief and the subject matter is already pending before the Tribunal, therefore the

petition is not maintainable. The petitioner was not eligible for the membership of the Vikas Sabji Phal Phool Utpadak Evam Vipanan Sahkari Samiti Maryadit, Kawardha, on the date on which he was inducted as a member, he had not fulfilled the requisite qualifications for becoming a member as laid down in the bye-laws. Action of the Registrar was within his competence and strictly in accordance with law. Sub-section (8) of Section 49 of the Act itself enables the Registrar to assume the charge of the Society. The applicability of sub-section (8) of Section 49 of the Act on respondent No.3 Marketing Federation is subject matter of another petition bearing W.P.No.2230/2001. The notification dated 28.10.2000 is not applicable to respondent No.3. Therefore the petition be dismissed.

8. Similar return has been filed on behalf of respondent No.3 and also respondent No.4. Respondent No.4 has mentioned that on receipt of the complaint about non-functioning of the Vikas Sabji Phal Phool Utpadan Evam Vipanan Sahakari Samiti, Kawardha, an enquiry was conducted which resulted in deregistration of the aforesaid Samiti of Kawardha vide order dated 28.2.2002 (Annexure R-2/1). By virtue of Rule 45 of the Chhattisgarh Co-operative Societies Rules, 1962, if a society ceased to exist, its representative or delegate also ceased to represent societies either in Central or in Apex Society. Therefore, it is submitted that after deregistration of the said Society, the petitioner has now ceased to be a representative of that Society. In view of the provisions of sub-section 8 (i) of Section 49 of the Act, it was obligatory on the outgoing committee to hold the election prior to expiration of the term of the committee which shall be within the reasonable time i.e. 90 days before expiration of the term of the committee. This was not done by the committee. It is denied that the petitioner or his wife requested to hold elections before expiration of the term. It is, therefore, prayed that the petition be dismissed.

9. We have heard Mr. Alok Aradhe, Advocate with Mr. P. Diwaker & Mr. Bhaskar Payashi, Advocates on behalf of the petitioner; Dr. N. K. Shukla, Additional Advocate General on behalf of the State/respondents; and Mr. Prashant Mishra, Advocate, on behalf of the intervener.

10. In order to appreciate the arguments advanced by the respective counsel, it is necessary to have a look at the relevant provisions which are extracted herein below: -

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"Section 49 Sub-section (7-A) (i) the term of the committee shall be five years from the date on which first meeting of the committee is held:

Provided that where a committee superseded, suspended or removed under the Act is reinstated as a result of any order of any court or authority, the period during which the committee remained under supersession, suspension out of office as the case may be, shall be excluded in computing the period of the term aforesaid.

(ii) The term of the representative elected by the committee of the society shall be co-terminus with the term of the committee of the society for which representative is elected:

Provided that the representative of a committee shall continue to hold his office till the expiry of the term of the committee of which he is a member.

(7-AA) The State Government may, by notification, for reasons to be stated therein, extend the term of the committee of a society or a class of societies from time to time, for a total period not exceeding twelve months.

(7-AAA) Notwithstanding the expiry of the maximum period of eighteen months specified in sub-section (7-AA), in respect of the committees between the period commencing on the 7th May, 1988 (hereinafter referred to as the said date) and ending on the date of publication of the Madhya Pradesh Co-operative Societies (Amendment) Ordinance, 1988, in Gazette the period in respect of such Committees shall be deemed to have been extended for a period of six months with effect from the said date as if the notification for the extension of the period were issued under sub-section (7-AA) on the said date.

(8) (i) It shall be obligatory on the outgoing committee of the society to hold elections prior to the expiration of the term under sub-section (7-A) or extended term under sub-section (7-AA). The outgoing committee shall apply to the Registrar for holding election within a reasonable time which shall not be in any case less than ninety days before expiration of the term of the committee:

Provided that if the outgoing committee has resolved and requested the Registrar to hold election at least ninety days in advance and the Registrar has failed to conduct elections on its request, the Registrar shall not assume charge of the committee and the members of the committee shall continue to hold the offices:

Provided further, that if the Registrar fails to conduct elections of the committee within ninety days from the date of expiry of the term of the committee, the committee of the society shall appoint returning officer who shall conduct the election of the committee within 180 days from the date of the expiry of the term.

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(ii) If the committee fails to hold election and has not handed over the charge on expiration of the term, under sub-section (7-A) or extended term under sub-section (7-AA) to the Registrar or any officer authorized by him on his behalf, all the members of the committee shall be deemed to have vacated their seats and the Registrar shall assume charge and hold election as early as possible.

Section 10 of the Act provides for Classification of Societies.

As per sub-section (1) of Section 10 the Registrar by his order dated 13.5.1976 has classified the various societies. As per sub-clause (11) of Clause 9 the Registrar has classified 'M.P. State Co-operative Marketing Federation' as 'Processing Society'.

(2) The Registrar for reasons to be recorded in writing may alter the classification of any society from one head to another.

(3) The decision of the Registrar in respect of classification of societies shall be final.

Sub-Section (2) of Section-3 of the Madhya Pradesh Sahkari Society (Punergathan Aur Nirman) Ordinance 2000 (published in the Extraordinary Gazette dt. 18th October, 2000) reads as under:- "Notwithstanding anything contained in the Madhya Pradesh Co-operative Societies Act, 1960 (No.17 of 1961) and Rules made thereunder, the registration of the existing societies shall not be cancelled and the office bearers, the Directors and the representatives of the existing societies shall continue in their respective offices in the reconstituted or the corresponding new societies, as the case may be, depending upon the area in which the society, represented by such an office bearer, director or representative is situated, till the expiry of their term under the provisions of Madhya Pradesh Co-operative Societies Act, 1960 (No. 17 of 1961).

Provided that in case of the Madhya Pradesh Rajya Sahakari Avas Sangh, the office bearers of existing Society shall continue to hold their respective offices in the reconstituted society for Madhya Pradesh till the expiry of their term"

Notification No.F.5-6-2000 XV-1 dated 28th October, 2000 through which the term of the non-agricultural, non-credit apex society was extended reads as under: -

"Consequent to the enactment of Madhya Pradesh State Re-organization Act 2000 and formation of new State of Chhattisgarh in near future, the State Government is of the view that the term of the Committees of All Non-Agricultural, Non-Credit Apex Societies should be extended"

Now, therefore in exercise of the powers conferred by sub-section (7-AA) of Section 49 of the Madhya Pradesh Co-

operative Societies Act, 1960 (No. 17 of 1961) the State Government hereby extend the term of the Committees of the said societies for a period of 12 months from the date of expiry of the term of their respective committees."

11. Learned counsel for the petitioner argued that after the formation of new State of Chhattisgarh, the Marketing Federation came into existence in view of the provisions of sub-section (2) of Section 3 of the Madhya Pradesh Sahkari Society (Punergathan Aur Nirman) Ordinance 2000, and as per the original tenure, the Marketing Federation was to continue till 3rd January, 2002. Thereafter, in view of the notification dated 28.10.2000, issued by the State of Madhya Pradesh under the provisions of sub-section (7-AA) of Section 49 of the Act, the term of all non-agricultural and non-credit societies was extended for a period of 12 months. Therefore, the Board of Directors of the Marketing Federation was entitled to continue till 3rd January, 2003.

12. On the other hand, the learned Additional Advocate General argued that the Ordinance dated 18th October, 2000 was issued by the erstwhile State of M.P. and the State of M.P. later on enacted the law in terms of the said Ordinance. But the State of Chhattisgarh which came into existence on 01.11.2000 had not enacted the law based on the Ordinance dated 18.10.2000. Therefore, that Ordinance which was promulgated by the Governor of M.P. on 18.10.2000 has lapsed on the expiration of six months period. In the circumstances, the petitioner was not entitled to continue on the strength of that Ordinance issued by the erstwhile State of M.P. as the same was not enacted as law by the Legislature of Chhattisgarh within a period of six months. He further submitted that even the notification dated 28.10.2000 issued under sub-section (7-AA) of Section 49 of the Act by the erstwhile State of M.P. was not adopted by the State of Chhattisgarh, therefore on that count also the Board of Marketing Federation was not entitled to continue up to 3rd January, 2003. He further argued that the Marketing Federation is an agricultural and credit apex Society, therefore, the petitioner cannot derive the benefit out of the notification dated 28.10.2000 as the same was applicable in the case of only non-agricultural and non-credit societies.

13. The learned counsel for the petitioner further argued that in view of sub-section (f) of Section 2 of the M.P. Reorganisation Act, 2000, (for short 'the Act, 2000') "law" includes any enactment, ordinance, regulation, order, bye-

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law, rule, scheme, notification or other instrument having, immediately before the appointed day, the force of law in the whole or in any part of the existing State of Madhya Pradesh.

14. It is true that as per sub-section (f) of Section 2 of the Act, 2000, all the laws including any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instruments which were having the force of law before the appointed day in the whole of the State of Madhya Pradesh were to be continued in the State of Chhattisgarh as per the provisions of Section 79 of the Act, 2000.

15. As per Section 79 of the Act, 2000, the State of Chhattisgarh was required to adapt the same before the expiration of two years from the appointed day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent legislature of other competent authority. The Ordinance dated 18.10.2000 was enacted as law by the State of M.P. on 20th November, 2000. The Ordinance which was promulgated on 18.10.2000 by the State of M.P. later on was enacted as law on 20.11.2000, therefore, it was in force for two years i.e. up to 31.10.2002, in view of the provisions of Sections 2 (f) and 79 of the Act, 2000, as such the petitioner and the Board were entitled to continue till expiration of their term i.e. 03.01.2002. The State of Chhattisgarh had adapted the Madhya Pradesh Co-operative Societies Act, 1960, on 13th June, 2001, vide notification No.F-7-3/COOP/15/2436 in exercise of the powers conferred by Section 79 of the Act, 2000. Clause 3 of this adaptation notification lays down that anything done or any action taken (including any appointment, notification, notice, order, rule, form, regulation, certificate or licence) in exercise of the powers conferred by or under the laws specified in the schedule shall continue to be in force in the State of Chhattisgarh.

16. Now, coming to the question whether in view of the notification dated 28.10.2000, issued under sub-section (7-AA) of Section 49 of the Act, the term of the Marketing Federation of the State of Chhattisgarh was extended for a further period of one year, the said notification envisages that the term of non-agricultural and non-credit societies was extended for a period of one

year. Now, the questions arises as to whether the Marketing Federation of the State of Chhattisgarh is a non-agricultural and non-credit Society.

17. Learned counsel for the petitioner submitted that as per the provisions of Section 10 of the Act, the Registrar of Co-operative Societies had classified various societies and as per sub-head No.9, the State Co-operative Marketing Federation has been put at item No.(11) in the category of Processing Society. Therefore, the Marketing Federation being the Processing Society is not an agricultural or credit society. This argument of the learned counsel for the petitioner, prima facie on the face of it, looks to be attractive and impressive, but when we put it to scrutiny then the argument is misconceived. If we look into the classification made by the Registrar under Section 10 of the Act, he has not classified the Societies in the category of agricultural or credit societies or non-agricultural or non-credit societies. Therefore, in order to decide the question as to whether the Marketing Federation is a non-agricultural and non-credit society, we have to look into the bye-laws of the Society. Bye-law No.3 lays down the objects of the Marketing Federation viz., to develop and assist the activities of the Co-operative Marketing Federation, co-operative fruit and vegetable production, marketing of the same, co-operative cold storage, monitoring and supervision of the Societies. The objects of the Society also include the sale of the agricultural produce, fruits and vegetables. The objects further include the collection of agricultural and other goods, their storage, construction of their godown, the arrangement of fertilizers and seeds for the purpose of Societies, manufacture of the agricultural tools and encouraging the agricultural produce and their marketing, the investment of money of the Marketing Federation in Government Banks and other Credit Societies and to receive loan from Co-operative Bank, Reserve Bank, State Bank of India with the permission of the Registrar. Therefore, the above bye-laws of the Society, show that the Marketing Federation was constituted for agricultural and financial activities. Hence, it cannot be said that the Marketing Federation is a non-agricultural and non-credit society. In the circumstances, the Marketing Federation being an agricultural and credit society, the petitioner and the Board of Marketing Federation were not entitled to continue for a further period of one more year under the notification dated 28.10.2000 beyond 3.1.2002 on expiry of its original term. Therefore, in any case, the petitioner was not entitled to continue as Chairman of the Marketing Federation beyond 3rd January, 2002, and up to

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that period the petitioner continued under the orders of the Court as Chairman of the Marketing Federation.

18. Now, coming to the question as to whether the petitioner is entitled to continue till the new elections of Marketing Board/Societies are held, in this connection, learned counsel for the petitioner relied upon the provisions of sub-section (8) (i) of Section 49 of the Act, which lays down that it is obligatory on the outgoing committee of the society to hold elections prior to the expiration of the term under sub-section (7-A) or extended term under sub-section (7-AA) and the outgoing committee shall apply to the Registrar for holding election within a reasonable time which shall not be in any case less than ninety days before expiration of the term of the committee: Provided that if the outgoing committee has resolved and requested the Registrar to hold election at least ninety days in advance and the Registrar has failed to conduct elections on its request, the Registrar shall not assume charge of the committee and the members of the committee shall continue to hold the offices: Provided further, that if the Registrar fails to conduct elections of the committee within ninety days from the date of expiry of the term of the committee, the committee of the society shall appoint returning officer who shall conduct the election of the committee within 180 days from the date of the expiry of the term. Sub-section (8) (ii) of Section 49 of the Act, lays down that if the committee fails to hold election and has not handed over the charge on expiration of the term, under sub-section (7-A) or extended term under sub-section (7-AA) to the Registrar or any officer authorized by him on his behalf, all the members of the committee shall be deemed to have vacated their seats and the Registrar shall assume charge and hold election as early as possible.

19. In this connection, we may look into the petition to find out whether in the situation, the Board of the Marketing Federation requested the Registrar ninety days before the expiration of the term of the Board i.e. 03.01.2002. As has been discussed and held above, the Marketing Board and the petitioner were not entitled to continue under the notification dated 28.10.2000, whereby the period of one year was extended to the non-agricultural and non-credit societies. Therefore, under these situations, the term of the Board of Directors of the Marketing Federation was up to 03.01.2002 and the Registrar took over the charge as per Annexure P-6 on 10.01.2002 i.e. on expiry of five years term of the Marketing Federation. It

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has no where been mentioned in the petition that the petitioner Board had ever made request 90 days before the expiration of the term to the Registrar for holding the elections. Rather, it has been mentioned in the petition that in view of the notification dated 28.10.2000, the Board of the Marketing Federation was entitled to continue till 03.01.2003. Para 5.11 of the petition says that in view of the notification dated 28.10.2000, the petitioner as well as other members of the committee of the society are entitled to continue up to 03.01.2003. However, this notification was not brought to the notice of the Court and the Registrar vide order dated 11.09.2001 directed that the process of election of respondent No.3 should commence. It has further been mentioned that the order of the Registrar suffers from jurisdictional infirmity, as the process of election could not have been initiated by the Registrar, as the committee of the society was entitled to continue till 03.01.2003. Consequently, order dated 11.09.2001 as well as the elections of the primary societies held in pursuance of the aforesaid order are also liable to be quashed. Therefore, oral request to the Registrar for holding the elections ninety days prior to expiry of the term of the Marketing Federation does not arise. On the contrary, the petitioner has requested for quashing the process of elections in pursuance of the order of the Registrar dated 11.09.2001.

20. The petitioner, in another petition namely, W.P.No.2230/2001, in paragraph 27 (L) of the amended petition, has mentioned that the petitioner and his wife made a request to the Registrar to hold elections 90 days in advance before expiry of the period of the term as per Annexure P-48 and it is also mentioned that the election process has already been commenced. It has come in the return filed by respondent No.13 in W.P.No.2230/2001 that the then Managing Director of the Marketing Federation filed a letter dated 09.01.2002 (Annexure R-13-2) in which it has been mentioned that no such request was made to the Registrar by the Vice-Chairman or Chairman for holding the elections. An affidavit dated 14.01.2002 (Annexure R-13-3) was filed by Mr. Harish Chandra, Steno to the Registrar, stating that no letter dated 27.09.2001 (Annexure A-1) was ever received in the Office of the Registrar, Co-operative Societies, Raipur, at any point of time, for holding the elections. Therefore, on affidavit it has been made clear by the Steno to the Registrar that no request was received for holding the elections. Even if we look into that request dated 27.09.2001 (Annexure A-1) same was not made by the Board of Directors/Committee, but only by the petitioner and

his wife. In the main body of the petition it has not been mentioned that any request was made by the petitioner ninety days before the expiry of the term.

21. Therefore, in this petition, the petitioner has failed to establish that the Board of Directors made any request for holding elections ninety days before 03.01.2002. It is further clear from the pleadings of this petition as well as W.P.No.2230/2001 that the petitioner convened Meeting of the Board on many occasions, but quorum was never complete and in all such meetings, out of 14 Directors only two or three Directors were present and the petitioner as the Chairman was not able to transact the business of the Board on account of non-cooperation of other Directors. Therefore, there was no question of requesting the Registrar by the Board for holding elections of the Society.

22. Even the Primary Society, from where the petitioner became delegate, had already been deregistered vide order dated 27.02.2002 and by virtue of Rule 45 of the Chhattisgarh Co-operative Societies Rules, 1962, if the Society is ceased to exist his representative or delegate also ceased to represent the Societies either in Central or in Apex Society. Therefore, in view of deregistration of the Society, the petitioner now ceased to be a representative of the Society and he is not entitled to continue as Chairman on this ground also. The deregistration order dated 27.02.2002 passed by the Additional Registrar has not been challenged in the writ proceedings.

23. The learned Additional Advocate General for the State/respondents argued that alternative remedy was available to the petitioner to file a petition before the State Co-operative Tribunal at Bhopal and in fact, the wife of the petitioner, who was one of the Directors, had filed a petition before the Tribunal and it was pending. But during the course of the arguments it was submitted that now, the Tribunal stands abolished. Moreover, as per the judgment of the Hon'ble Supreme Court, in the case of **HARBANSLAL SAHNIA AND ANOTHER VS. INDIAN OIL CORPORATION LTD. AND OTHERS** reported in **(2003) 2 S.C.C. 107**, it is held that "the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion". It is settled law that the alternative remedy is a rule of discretion and is not a rule of law. Where the question of law is involved then the writ under Article 226 of the Constitution of India can be entertained and the alternative remedy cannot be applied. Since, in

this matter, pure question of law and interpretation of law are involved and no factual aspect is involved, the objection raised by the learned Additional Advocate General is without force and the same cannot be accepted.

24. Therefore, in view of what has been discussed above, the petitioner's petition is without force and the same is liable to be dismissed. The writ petition is accordingly, dismissed.

25. Looking to the facts and circumstances of the case, cost is made easy.

Sd/-
Chief Justice

Sd/-
L.C.BHADOO
Judge

Some